



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/247,418	02/10/1999	HOLGER EGGERS	MO-5041/WW-5	7618

7590 01/08/2004

William C. Gerstenzang, Esq.
Norris, McLaughlin & Marcus, P.A.
220 East 42nd Street - 30th Floor
New York, NY 10017

EXAMINER

KRUER, KEVIN R

ART UNIT PAPER NUMBER

1773

DATE MAILED: 01/08/2004

30

Please find below and/or attached an Office communication concerning this application or proceeding.

eb 30

Advisory Action	Application No. 09/247,418	Applicant(s) EGGERS ET AL.	
	Examiner Kevin R Kruer	Art Unit 1773	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 3 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY (check either a) or b))

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 09 September 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 2-10, 12-24, and 26-31.

Claim(s) withdrawn from consideration: NONE.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Advisory Action

Applicant's arguments filed October 30, 2003 have been considered, but are not persuasive.

With respect to the rejection of claims 31, 2, 3, 6-10, 13, 15, 17-20 and 23 over Dobreski, Applicant argues that the intermediate layer has a lower melt index than the outer layer. The examiner agrees, but notes that the embodiment under which the claims were rejected (i.e. the embodiment wherein the film taught in Dobreski has been clung to an adjacent cling film) comprises an inner ply with a higher melt index than the outer ply. Specifically, the inner ply (the "outer layer" taught in Dobreski) has a melt index of greater than 2.5 (abstract) and the outer ply (the "intermediate layer" taught in Dobreski) has a melt index of 0.5 to 2.5. In said embodiment, the inner ply (the "outer layer" taught in Dobreski) is between a substrate (i.e. the second cling film) and the outer ply (the "intermediate layer" taught in Dobreski).

Applicant argues that even in the embodiment wherein the film taught in Dobreski has been clung to an adjacent cling film, the intermediate layer of Dobreski (herein relied upon to read on the claimed "outer ply") is not the outer layer of the laminate. However, the claim does not require that the outer ply be the outer layer of the laminate. The claim is directed to a laminate "comprising" the claimed heat sealable layer and the substrate. Thus, other layers may be present. The claim requires only that the claimed outer ply be outside of the claimed inner ply relative to the claimed substrate.

Applicant further argues that two cling films clung together are not attached permanently. In response to applicant's argument that the references fail to show

Art Unit: 1773

certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., permanent attachment) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claim does not recite any limitation with regard to the interlayer strength between the claimed layers.

With respect to Dobreski in view of Simmons, Applicant argues that Simmons does not make up for the deficiencies of Dobreski. As explained above, Dobreski renders obvious the claimed invention. Thus, Applicants arguments with respect to Dobreski in view of Simmons are not persuasive.

With respect to the rejection of claims 31, 2-10, 12, 13, 14, 17, 18, 19, 22, 23, 26, 27, and 28 over Paleari in view of Hodgson, Applicant argues that the heat sealable layer (a) of Paleari has a higher melt index than the inner layer (b). In some embodiments, the melt index is at least three times higher. The examiner agrees. Specifically, Paleari teaches that the heat sealable layer (a) (herein relied upon to read on the claimed "inner ply") may comprise the heat seal material disclosed in Hodgson. Hodgson teaches that the heat seal material may have a melt index of 0.5-7.5dg/min. The examiner notes that 1dg (decigram)=0.1g. Thus, Hodgson teaches the heat seal material should have a melt index of 0.05-0.75g/min, or 0.5-7.5g/10min. The inner layer (herein relied upon to read on the claimed "outer ply") of Paleari is taught to have a melt index of less than 0.35g/10min (col 6, lines 31-38).

Furthermore, Applicant argues that the film is no longer heat sealable when the heat seal layer of Paleari is sealed to a substrate. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a heat sealable outer ply) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claim requires the laminate to comprise a multi-ply heat sealable layer comprising an inner and outer ply. The claim is not limited to films wherein the outermost layer is heat sealable.

The examiner notes that claim 22 should have been included in the rejection statement of Paleari in view of Hodgson. The examiner apologizes for the obvious typing oversight. However, the Office Action Summary notes that claim 22 was rejected. Furthermore, the limitations of claim 22 were discussed in the rejection. Specifically, Hodgson teaches that the VLDPE polymer is metallocene catalyzed, has a melting point of 60-115°C (abstract) and has a Mw/Mn in the range of 1.5-3.5 (col 5, line 1).

With respect to the rejection of claims 31, 2-11, 13, 15, 17-21, 23, 26-28, and 30 over Chum, Applicant argues that the outer layer taught by Chum must always be exposed for heat sealing. Thus, Chum's core layer (which is relied upon to read on the claimed "outer ply") would never be between the heat sealing layer (relied upon to read on the "inner ply") and the substrate. The examiner respectfully disagrees. When Chum is applied to a substrate (such as EVOH, PVC, nylon or PVDC as taught at

Art Unit: 1773

column 3, line 33) the heat sealable layer (herein relied upon to read on the claimed "inner ply") is between the substrate and the core layer (herein relied upon to read on the claimed "outer ply").

Applicant argues that the core layer of Chum (herein relied upon to read on the claimed "outer ply") is not the outer layer of the laminate. However, the claim does not require that the outer ply be the outer layer of the laminate. The claim is directed to a laminate "comprising" the claimed heat sealable layer and the substrate. Thus, other layers may be present. The claim requires only that the claimed outer ply be outside of the claimed inner ply relative to the claimed substrate.

With respect to claim 24, Applicant argues that there is no suggestion to utilize calcium carbonate in the film taught by Chum. The examiner respectfully disagrees. Chum teaches that any layer of the laminate may comprise a pigment. Calcium carbonate is a known pigment in the art. The courts have held that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination (see MPEP 2144.07). Thus, Applicant's arguments are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-0025. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on 703-308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Application/Control Number. 09/247,418

Art Unit: 1773

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308 0661.

K-R K-

Kevin R. Kruer
Patent Examiner-Art Unit 1773

Stevan A. Resan

STEVAN A. RESAN
PRIMARY EXAMINER